

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

**BITLER INVESTMENT VENTURE II, LLC,**      )  
**et al.,**                                            )  
                                                          )  
**Plaintiffs,**                                        )  
                                                          )  
**v.**                                                    )      **CAUSE NO. 1:04-CV-00477**  
                                                          )  
**MARATHON ASHLAND PETROLEUM LLC,**      )  
**et al.,**                                            )  
                                                          )  
**Defendants.**                                        )

**OPINION AND ORDER**

This matter is before the Court on the motion (DE # 73) of the Defendants to compel the production of fifteen e-mails provided to the Plaintiffs' expert and listed on the privilege log attached to the Defendants' motion. The Plaintiffs, however, repeatedly request in their response that the Court conduct an *in camera* review of the documents because the subject matter of the e-mails (and presumably their content) "have nothing to do with" the expert's opinion. (*See* Pls.' Resp. to Mot. to Compel Produc. of E-mails at 6-7.)

If the Plaintiffs' assertion is true, they contend that it therefore follows that the expert neither "considered" nor "relied" on the e-mails, taking this situation outside the scope of *Karn v. Ingersoll-Rand Co.*, 168 F.R.D. 633 (N.D. Ind. 1996). The Plaintiffs' assertion, however, is clearly problematic, given the broad sweep of the term "considered" and that the Plaintiffs' reliance for the principal is grounded in the case of *Simon Property Group, L.P. v. mySIMON, Inc.*, 194 F.R.D. 644, 649-50 (S.D. Ind. 2000), which was addressing inadvertent disclosures, not the type of disclosures we have here.

Nevertheless, so as to give full consideration to the record, the Court will conduct an *in camera* review of the documents before ruling. Accordingly, counsel for the Plaintiffs is directed to submit the documents under seal to the Court forthwith and to file a notice at the time the documents are tendered so opposing counsel is aware of their submission. The motion to compel (DE # 73) remains under advisement.

SO ORDERED.

Entered this 25th day of January, 2007.

/S/ Roger B. Cosby

Roger B. Cosby,  
United States Magistrate Judge